



**RESPONSE FROM NAGALRO TO DEPARTMENT FOR EDUCATION  
CONSULTATION 'REGULATING SUPPORTED ACCOMMODATION FOR  
LOOKED AFTER CHILDREN AND CARE LEAVERS AGED 16 AND 17'  
DATED 5 DECEMBER 2022**

**Format of this response**

This response has not been provided via the online survey. To assist with the processing of the response, the following details are set out as required by the consultation:

- **Name:** Nagalro
- **Contact details:** PO Box 264, Esher, Surrey, KT10 0WA.  
Telephone 01372 – 818505. Email: [nagalro@nagalro.com](mailto:nagalro@nagalro.com)
- The response is provided by an organisation.
- There is no requirement for the response to be kept confidential.

Nagalro has several concerns about the proposals for regulating supported accommodation for children aged 16 and 17 years. The concerns do not fit clearly or easily into the questions put by the online survey and, for that reason, we have elected to set out these concerns in this separate document.

**Background to Nagalro**

Nagalro is the professional association for children's guardians, family court advisers and independent social workers. Nagalro was formed over 30 years ago to support the work of children's guardians in child care proceedings and has been one of the architects of the practical development of the tandem model of representation of the child in care proceedings, whereby specialist social workers and solicitors work together to promote the welfare of the child, provide an understandable explanation to the child and convey their wishes and feelings to the court. Nagalro's brief has since expanded to support diverse independent social workers but remains the only professional social work organisation exclusively concerned with practice within the field of child protection and children involved with the family court.

**A lack of coherent structure**

The Government is currently considering two significant reports dealing with children's social care and which have a direct bearing on the use of, what is to be described as, supported accommodation. Because this accommodation is overwhelmingly likely to be provided by the private sector the report from the Competition and Markets Authority *Children's social care market study*, published in March 2022 is, we would contend, of huge significance in the way in which accommodation for children is provided.

The Government has carried out The Independent Review of Children's Social Care and Josh MacAlister's report was published in May 2022. We would have expected

that any reform to the nature and regulation of accommodation for older children should form part of a coherent approach to children's social care rather than dealing with this in a piecemeal fashion when the Government has yet to respond to its own independent review.

Despite previous Government promises to respond to both reports 'before the end of the year', on 25 November 2022, the new Children's Minister, Claire Coutinho, could only say that the response would be 'early in the new year'. These responses are likely to post-date the implementation of the matters contained in this consultation.

### **Vulnerability and exploitation**

There is already good evidence that children in local authority, and particularly, unregulated accommodation, are highly vulnerable to child criminal exploitation (CCE). What is disappointing is the failure to address this issue within the consultation, beyond the most superficial manner.

Two reports published by Crest Advisory Service in 2020 and 2022 set out the issues very starkly. The first report, *County Lines and Looked After Children*, published in November 2020 sets out the matter clearly:

*'Looked after children (LAC), children who have been taken into local authority care as a statutory intervention to improve their welfare, are widely recognised as being at disproportionate risk of being groomed and exploited in county lines. As their 'corporate parents', the agencies of the state are collectively responsible for the welfare of these children. Yet as these children are moved into accommodation often at a great distance from their home area, sometimes in unregulated settings, their vulnerability to criminal exploitation increases.'*

Nagalro hoped that the structures proposed in this consultation would have taken a robust approach to choke off the supply of vulnerable and isolated young people to be recruited as disposable foot-soldiers for organised crime organisations running 'county lines' drug dealing gangs. It is disappointing that this opportunity has been missed.

One of the difficulties, we perceive, is the point made in Crest's 2022 report (Calouri *et al*, 2022) that the Department for Education has ceded the national role in CCE to the Home Office. We wonder whether the lack of focus on risks posed by CCE is attributable to the Department for Education no longer having the required experience and expertise to ensure that these issues are dealt with.

It is relevant to point out the Department for Education's own analytical report, published in December 2021, following a consultation on the introduction of these national standards. At questions 14 and 15, consultees were asked 'Are there examples of where it would be appropriate to place a looked-after child or care leaver aged 16 or 17 in a setting that does not deliver any care or support?' There were 210 responses to this question, with 172 respondents stating that this would be inappropriate. Of relevance to the issue of CCE, all the responses received from police forces were unequivocal in their rejection of accommodation which did not include care or support.

Reading 'the protection standard' in the draft document, we are only able to locate two references to criminal exploitation. The first is a general requirement for the registered person to prepare and implement child protection policies. The second is in connection with providers having a missing child policy. We regard that as totally inadequate to meet the scale of the risk posed to looked-after children by organised crime and amounts to an unacceptable delegation of the parental responsibility and/or legal duty of care that local authorities owe towards children under care orders and other looked-after children in their care.

In *Unregulated* the Children's Commissioner records that she 'was told by police about providers affiliated with major organised crime operations, which are exploiting the lack of regulation for their own gain'. Turning to the document for consultation, we have looked for evidence that these risks to children have been addressed. If the plan was to ensure that children are not placed in the hands of organised crime we would have expected a system of intelligence sharing between Ofsted and the local police force. It is simply not sufficient to require enhanced DBS checks for the registered person, registered manager and staff. What is required is a much deeper understanding of affiliations, financing and associations. Where individuals known to have drug dealing involvement are seen by the police around supported accommodation, this should be shared with Ofsted and with the local authorities placing children there.

### **The voice of the child**

There is an unspoken, assumption within the draft guidance that, when older children are placed in this kind of accommodation, the move matches the wishes of the child. There is no suggestion, within the draft guidance, that children may be placed in such accommodation against their wishes. The draft tells us that:

*'Looked-after children and care leavers are often some of the most vulnerable children and young people in society, and we must work together to do all that we can to ensure that they have access to suitable and nurturing accommodation that can meet their needs and keep them safe. For most children and especially those at greater risk of exploitation, this is best achieved through a placement in foster care or a children's home, for which there are already robust approaches to approving, registering and quality-assuring provision. However, for some young people aged 16 or 17, living in supported accommodation can be the best option to meet their needs, with the aim of supporting young people to develop their independence ahead of leaving the care system as they approach adulthood.'*

Those who are to be registered under these draft provisions do not, of course, have any control over decisions about care planning. What we do know is that, currently, children are being moved at the age of 16 from foster care into, what is currently, unregulated accommodation, even though this is the last thing they actually want to do. In 2020, Anne Longfield, the then Children's Commissioner for England, said in her report *Unregulated*:

*'Another major problem is that many children are moved to unregulated accommodation because they have turned 16, rather than because it is in*

*their best interests. Unregulated provision is often cheaper than other forms of residential care, plus moving 16-year-olds frees up space for younger children who need somewhere to live. When these are the considerations driving local authority decisions rather than what the child wants or what is best for them, it is no surprise that many are not ready, and the move is unsuccessful’.*

In our view, the provisions of the Care Planning, Placement and Care Review (England) Regulations 2010 and the related provisions in volume 2 of the Children Act 1989 statutory guidance, do not provide sufficient prominence to the views of the child. It makes no sense that the draft guidance’s ‘Supported accommodation – key principles’ requires that ‘My voice is respected, heard and advocated for, so that I can influence the support I receive’ unless the views of the child about actually moving to that accommodation have also been respected. We would prefer to see a comprehensive package of measures for consultation, including amendments to the 2010 Regulations and the statutory guidance, to put forward a coherent structure for these children to ensure that the lofty ideals, set out in the passage quoted at the beginning of this section, are reflected in local authority decisions and practice. We would point out that when a local authority decides to move a looked-after child to ‘other arrangements’, as they are currently referred to:

- Regulation 27 of the 2010 Regulations simply requires the local authority to inform the child’s Independent Reviewing Officer;
- The only reference to the views of the child is to be found in para 2(a) of Schedule 6 as one matter, among many others, for the local authority to decide whether the accommodation is suitable.

It makes a mockery of the Staying Put provisions if local authorities, short of foster placements, are able to move children from a foster placement that is meeting their needs to supported accommodation to meet the needs of the local authority rather than the needs of the child. We would wish to see:

- A strengthened role for the IRO in these circumstances;
- The paragraphs from volume 2 of the statutory guidance are rewritten to make it clear that such moves are the exception rather than the rule and that this should not take place without the informed consent of the child.
- A clear reminder to local authorities that their duty under s22(4) Children Act 1989 to ascertain the wishes and feelings of the child must be read alongside s22(5) which requires the local authority to have regard to the child’s views ‘having regard to his age and understanding’. If the child is 16 years of age and is thought to have sufficient maturity to live semi-independently, then the child’s wishes must be given very significant weight when they say that they *do not* wish to move to such accommodation.
- A very clear, written assessment by the local authority of the ability of the child to cope with the reality of independence and shared with the IRO as part of the planning process.

### **For whom is supported accommodation suitable?**

We would echo the remarks of Lord Laming in his letter to *The Times* on 29 December 2022, when he says:

*'...we have now reached the position that we expect the greatest coping skills from those who, through no fault of their own, have had the worst starts in life. This cannot be acceptable'.*

A letter published on the same day from Judith Timms OBE highlights the same issue, saying:

*'Expecting independence at 18 is asking a great deal but expecting it at 16 is at best unrealistic and at worst terrifying and alienating, as the deaths of 29 young people testify'.*

Ms Timms' reference to the deaths of 29 young people refers, of course, to the statement on 23 February 2022, by the, then, Children's Minister, Will Quince MP, that, between 2016 and 2021, 29 looked-after children aged 16 to 17 years died whilst in independent or semi-independent accommodation. For a vulnerable child, these decisions can be, quite literally, life or death.

For those children who have come into local authority care through care orders, it is very likely that they will have suffered harm through neglect and trauma. This is more significant because the Department for Education's data shows that children are coming into care later in their childhood than was previously the case. When members of Nagalro are working with these children, for example as a Children's Guardian, we would usually be advising the court that this child is likely to require better than 'good-enough care' so that they have the best possible opportunity to overcome the earlier harm. This means that such children are less likely than a child who has not been exposed to trauma, abuse or neglect, to cope with independent living at age 16 or 17 years.

Part 2 of the Care Planning, Placement and Case Review (England) Regulations 2010 requires a local authority to submit to the court, in care proceedings, a care plan which details long-term plans for the health, education, emotional and behavioural development, identity, family and social relationships, social presentation and self-care skills, together with, *inter alia*, the wishes and feelings of the child about the plan. In the same way that regulations and statutory guidance need to be revised to ensure that the child's voice is heard and given significant weight before any move to supported accommodation takes place, we take the view that local authorities should address the issue of supported accommodation in the care plan. Particularly in cases relating to older children, the local authority should be required to say, within its care plan so that it can be scrutinised by the court and commented upon by the children's guardian, whether this child is likely to be suitable for such accommodation in the future. Again, these required amendments to regulations and statutory guidance to ensure that children are not inappropriately sent to supported accommodation are simply not part of the consultation and so, we can only assume, are not intended to happen and hence, the structure to protect children will be inadequate.

The consequences of placing a child in accommodation which places a level of personal responsibility upon them that they are not yet prepared to shoulder can have life-long consequences. We all know that the prison and homelessness

populations are hugely over-represented by care-experienced individuals. The skills required to live in such accommodation are not simple and we must not just set them up to fail.

In the earlier section of these representations, we have referred to the Department for Education's analytical report (Greatbatch *et al*, 2021) drawn from the Government's earlier consultation exercise. It is unfortunate that the Government did not, in its response to that consultation, engage at all with, what appears to be, almost unanimous opposition to 'care-less' accommodation for 16 and 17-year-olds.

We are particularly concerned to find a substantial section of the draft guidance dealing with the use of physical restraint by staff towards children placed in these premises. The fact that this issue features so prominently suggests, to us, that it is foreseen that children will be placed in supported accommodation whose needs are such that they should simply not be there. We are also concerned about the likely training and skills of the staff (including volunteers) who are being authorised to use physical violence (otherwise assault) on children for whom they are responsible. We would urge the Department for Education to seriously reconsider this issue and to reflect upon the lessons learned from many past examples, in many different kinds of establishments, where we have seen vulnerable individuals subjected to abuse from those supposed to be responsible for their care. If we do not learn from these histories we will condemn these children to repeat them.

Dated 13 January 2023

Nagalro

PO Box 264, Esher, Surrey, KT10 0HB

[www.nagalro.com](http://www.nagalro.com)

[nagalro@nagalro.com](mailto:nagalro@nagalro.com)

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